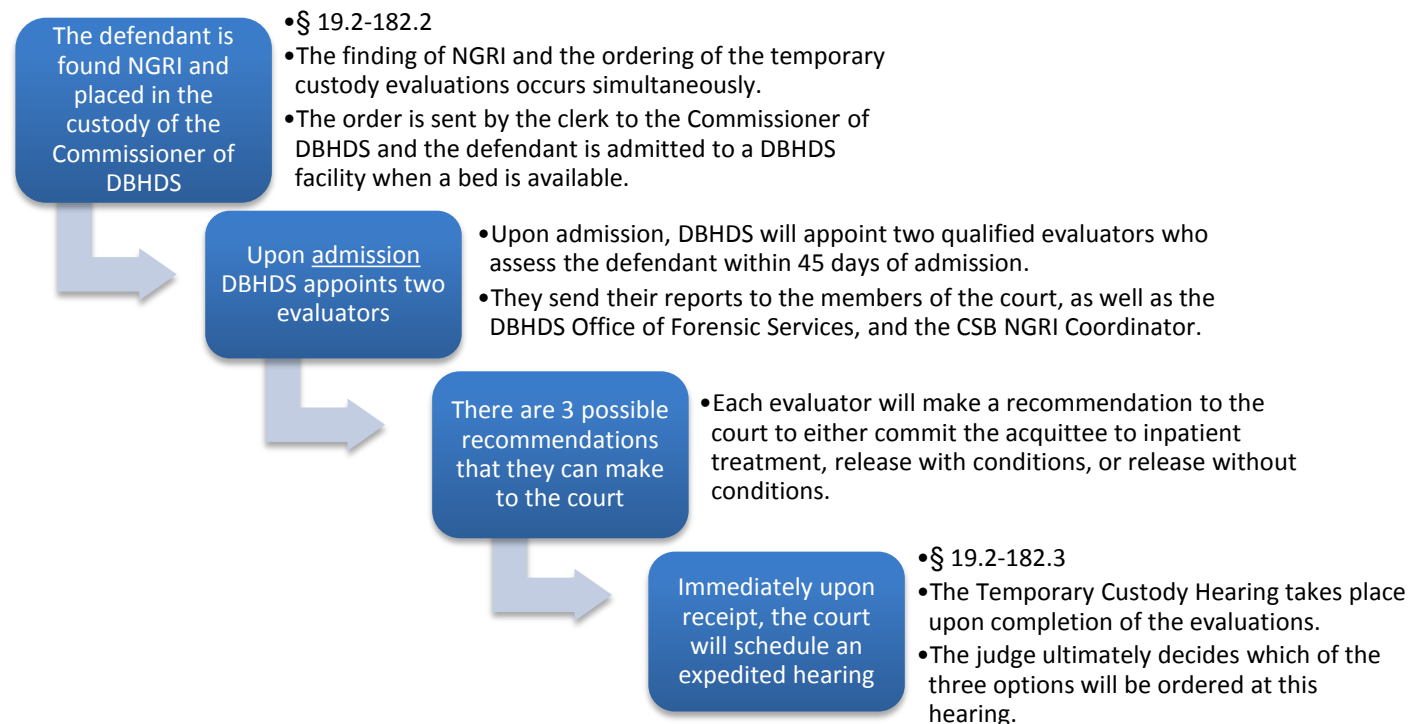


Section 2:

The Temporary Custody Period & Outcomes

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Temporary Custody Evaluations



Role of the Facility in the Temporary Custody Evaluation Process

The facility to which the acquittee is admitted for the temporary custody period will complete an *Initial Analysis of Aggressive Behavior* within 30 days of admission. The facility is responsible for sending this AAB to the appointed temporary custody evaluators.

Prior to admission, the facility also gathers any available documentation regarding the acquittee, including but not limited to the court order for temporary custody, the contact information for all attorneys and the court, a copy of the warrant or indictment, and criminal incident information/copy of the arrest report.

The facility will also identify and reach out to the appropriate Community Services Board that will be working with the acquittee in the hospital and eventually in the community. This is based on the acquittee's last known address. The facility will begin discharge planning with the appointed CSB.

The process of identifying risk factors, developing risk management plans, and assessing the individual's readiness for discharge all begin during this period.

**Role of the Office
of Forensic
Services in the
Temporary
Custody
Evaluation Process**

The Office of Forensic Services at DBHDS is the Commissioner's designee for making the official appointments of the temporary custody evaluators.

Upon notice of admission from the facility, Forensic Services staff will confirm two qualified DBHDS evaluators to perform the temporary custody evaluations. This entails an official appointment letter with copies of the court order and the packet of background information prepared by the facility.

The Office of Forensic Services will also send a copy of the appointment information to the Judge, the Commonwealth's Attorney, the defense attorney, and the appropriate CSB's NGRI Coordinator. This letter serves as notice to all parties of the acquittee's admission and timeframe for completion of the two temporary custody evaluations.

**Qualified
Temporary Custody
Evaluators**

§ 19.2-182.2 states the evaluations shall:

A) Be conducted by one psychiatrist and one clinical psychologist skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform such evaluations; **AND**

B) At least one of the two appointed evaluators will not be employed at the same facility where the acquittee is admitted; **AND**

C) Neither evaluator shall have provided previous court evaluation or consultation regarding the acquittee's insanity or mental state at the time of the offense.

The Evaluation

Each evaluation will be conducted separately.

The evaluators will prepare separate reports.

The evaluators will assess whether the acquittee is *currently* mentally ill or intellectually disabled, their *current* condition, and the acquittee's need for hospitalization based upon factors in §19.2-182.3.

The resulting report will include one of three possible recommendations: commitment, release with conditions, or release without conditions, and rationale for the recommendation.

The evaluators will send copies of their reports to the judge, Commonwealth's Attorney, Defense Attorney, the Office of Forensic Services at DBHDS, and the CSB NGRI Coordinator.

<i>Basis for a Recommendation for Commitment to Inpatient Hospitalization (§ 19.2-182.3)</i>	<p>The acquittee is mentally ill or intellectually disabled and in need of inpatient hospitalization, based on the following factors:</p> <hr/> <p>A) To what extent the acquittee is mentally ill or intellectually disabled, as defined in § 37.1-100;</p> <hr/> <p>B) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;</p> <hr/> <p>C) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and</p> <hr/> <p>D) Such other factors the court deems relevant.</p> <hr/>
<i>Basis for a Recommendation for Conditional Release (§ 19.2-182.7)</i>	<p>Based on consideration of the factors which the court must consider in its commitment decision, the acquittee does not need inpatient hospitalization but does need outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he or she would need inpatient hospitalization;</p> <hr/> <p>Appropriate outpatient supervision and treatment are reasonably available;</p> <hr/> <p>There is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and</p> <hr/> <p>Conditional release will not present an undue risk to public safety.</p> <hr/>
<i>Basis for a Recommendation for Release Without Conditions (§ 19.2-182.3)</i>	<p>Does not need inpatient hospitalization; <u>AND</u></p> <hr/> <p>Does not meet criteria for conditional release.</p> <hr/>

**Risk Assessment During Temporary Custody:
The Initial Analysis of Aggressive Behavior (AAB)**

***The Focus of the
AAB***

A. The Analysis of Aggressive Behavior (AAB) is a systematic means to (1) assess the risk(s) of aggression for an individual acquttee and (2) develop means by which to address the risk(s).

B. The AAB is a psychological evaluation that includes data collected on the acquttee's past aggressive episodes, treatment and social history, and current functioning and is used as a basis for:

1. Treatment interventions.
2. Decision-making regarding the management of privileges and placement for the acquttee.
3. Making recommendations to the court regarding conditional release and release without conditions.
4. Conditional release planning.
5. Community aftercare.

C. The focus of the AAB is identification of relevant risk factors for future aggression and for the planning of risk management strategies, rather than an attempt to *predict* aggression.

D. A comprehensive review of aggressive and/or dangerous behaviors is conducted, which is not limited to the NGRI offense.

E. Once the data on past aggressive episodes are collected from multiple sources (both collateral sources and self-report from the acquttee), an analysis of the following is performed, and described in detail:

1. The relationship, if any, of existing or pre-existing mental disorder(s) to past aggressive episodes.
2. Common characteristics or patterns across aggressive episodes.

F. Any factor related to an increased risk of aggression toward self or others will be identified as a risk factor. Each identified risk factor will be explained in a narrative and will have a description of strategies that will be used to manage that risk factor.

G. Finally, the AAB will also include mitigating and protective factors which could contribute to a decrease in aggression.

Conceptualizing Risk Factors



Static vs. Dynamic Risk Factors



The Format of the Initial AAB

-
- | | |
|---|--|
| 1. Identifying information | |
| 2. Purpose of the evaluation | |
| 3. Statement of nonconfidentiality | |
| 4. Sources of information | |
| 5. Relevant background information | |
| 6. Description of NGRI offense | A. Accuttee's account |
| | B. Collateral accounts |
| 7. Behavioral observations and mental status exam | |
| 8. Psychological testing results | |
| 9. Diagnostic impression | |
| 10. Patient strengths which mitigate the probability of future aggression | |
| 11. Analysis of aggressive behaviors | A. Narrative description of current risk factors |
| | B. Current status of risk factors |
| | C. Means of addressing risk factors |
-

The Initial AAB Completed During Temporary Custody

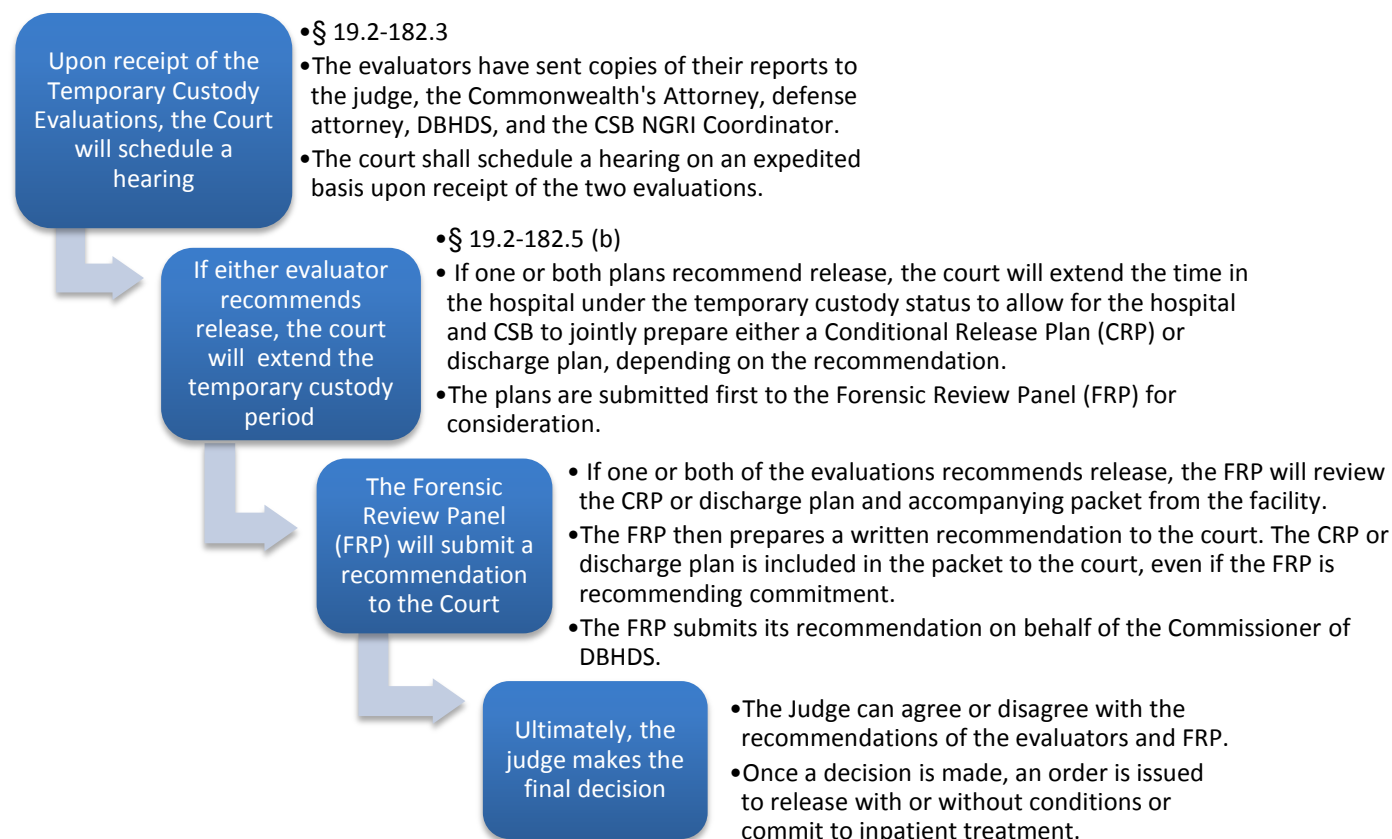
The Analysis of Aggressive Behavior begins at the time of admission to temporary custody placement.

The facility housing an acquittee in temporary custody will obtain the relevant information and complete the Initial AAB within 30 days of admission.

The AAB shall be provided as soon as possible to the two evaluators appointed by the Commissioner to perform the temporary custody placement evaluations. This information will be integral in making assessments and recommendations to the court regarding disposition.

The Initial AAB acts as a baseline for risk factors, establishing the current status of those risk factors at the point of temporary custody and the initial risk management plans. The AAB will be continually updated over the course of hospitalization.

The Temporary Custody Hearing and Disposition



The Forensic Review Panel **(§19.2-182.13)**

The Commissioner of DBHDS is given the authority to delegate any of their duties or powers to an administrative panel composed of persons with demonstrated expertise in such matters.

Members of the Panel are not compensated for their work on the Panel and are immune from personal liability except for intentional misconduct.

The Panel is established to ensure that release and privilege decisions for insanity acquittees reflect clinical, safety, and security concerns.

The Panel also ensures that standards for conditional release and release planning of insanity acquittees have been met, and provides consultation to the treatment teams working with the acquittees.

The Panel only reviews release/privilege requests for insanity acquittees who are in the custody of the Commissioner (not those on conditional release or unconditionally released).

The FRP is a seven-member group with psychologists, psychiatrists, a community member, and a DBHDS Central Office representative.

The Panel meets weekly to review insanity acquittee privileging and release requests from all DBHDS facilities throughout the state.

Recommendations to the court regarding privileging and release are made by the FRP on the Commissioner's behalf.

***When Both
Evaluators
Recommend
Commitment***

The DBHDS facility will continue to assess and treat the acquittee at the hospital until the court makes a final decision and issues a commitment order. No decisions related to hospital transfers or increase in privileges are made until the court's decision.

The CSB will collaborate and provide discharge planning services to the acquittee in the hospital. Often at this time the CSB and hospital are evaluating the individual's risk factors and resources/services that will be needed to manage risk if released to the community.

In a majority of cases, at the temporary custody hearing the judge will issue an order for commitment to the custody of the Commissioner of DBHDS, which begins the graduated release process in the hospital setting.

***When One
Evaluator
Recommends
Release and the
Other
Recommends
Commitment***

The judge will issue an order extending the temporary custody period in order for the hospital and CSB to prepare written release plans.

If even one evaluator recommends release (either with or without conditions), the DBHDS facility and the CSB are required to develop a release plan. In cases where Conditional Release is recommended, a Conditional Release Plan (CRP) is developed. In cases where release without conditions (Unconditional Release) is recommended, a written discharge plan is developed.

The CRP or discharge plan must be jointly prepared by the hospital and the CSB, according to the Code of Virginia. DBHDS strongly recommends that the CSB take the lead in drafting the plan, seeking input from the hospital and the acquittee before finalizing. The CSB should also ask for a copy of the AAB.

The DBHDS hospital will create a packet of information (including risk assessments, treatment records, etc.) and attach a copy of the CRP or discharge plan and send that to the FRP for review.

The FRP will issue an official recommendation on behalf of the Commissioner of DBHDS in writing to the court. The FRP will attach the written CRP or release plan even if they are recommending commitment.

The judge will review the two evaluations, as well as the recommendation from the FRP and the attached discharge plan, and will make a final decision.

***When Both
Evaluators
Recommend
Release***

Regardless of whether the evaluators both recommend release with conditions or release without conditions, the same steps are followed from above.

The court will extend the temporary custody period.

The hospital and CSB will jointly prepare a CRP or discharge plan. In cases where one evaluator recommends conditional release and the other recommends unconditional release, both a CRP and discharge plan will be developed. The CSB should also ask for a copy of the AAB.

The FRP will review and make recommendations to the court on the Commissioner's behalf.

The judge will review all available reports, recommendations, and plans and make a final decision.

***Factors
Considered by
the Court***

§19.2-182.3 addresses the factors that the court considers in reviewing the evaluations:

A) To what extent the acquittee has mental illness or intellectual disability, as those terms are defined in § 37.2-100;

B) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

C) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

D) Such other factors as the court deems relevant.

Criteria for Commitment

NGRI Commitment Criteria

§19.2-182.3 describes the criteria that the judge must use when making initial commitment decisions at the temporary custody hearing:

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1. To what extent the acquittee has mental illness or intellectual disability, as those terms are defined in § 37.2-100;
 2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;
 3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and
 4. Such other factors as the court deems relevant.
-

If the court determines that an acquittee does not need inpatient hospitalization because they have been stabilized through current treatment or habilitation, **but** the court is not persuaded that the acquittee will **continue** to receive such treatment or habilitation, it may commit him for inpatient hospitalization.

Otherwise, criteria for conditional release:

The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7.

Otherwise, criteria for unconditional release:

If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate Community Services Board or Behavioral Health Authority in consultation with the appropriate hospital staff.

Role of the CSB/BHA During Temporary Custody

Temporary Custody Admission and First Steps

The Temporary Custody Appointment letter serves as notice to the court members of the acquittee's admission to the DBHDS hospital and appointment of the two temporary custody evaluators. DBHDS will also mail a copy of this letter to the CSB NGRI Coordinator. This may be the first notice to the CSB of a new NGRI finding.

The supervising CSB is determined by the hospital upon admission, based upon the acquittee's last known address prior to incarceration. An individual may be found NGRI in a court outside of the assigned CSB's catchment area. The reason is because the acquittee committed the offense in one jurisdiction but their residence is in a different jurisdiction.

If there are conflicts about which CSB should be assigned to the case, please contact the Central Office Forensic Services staff.

The NGRI Coordinator and the CSB hospital discharge planner (if they are not the same person) should immediately make contact with the treatment team at the hospital to arrange for a visit or consult with the team and acquittee.

The NGRI Coordinator and the CSB hospital discharge planner should request (if the hospital has not already sent it), a copy of the Initial AAB as soon as it is completed (within 30 days of admission). Additionally, the CSB should provide any and all prior treatment records to the facility if the acquittee has previously been served at the CSB.

Collaboration and consultation with the treatment team about the acquittee's risk factors and risk management and discharge needs should begin immediately. All discharge planning protocols should be followed. To review the Collaborative Discharge Protocols for Community Services Boards and State Hospitals go to: <http://dbhds.virginia.gov/professionals-and-service-providers/mental-health-practices-procedures-and-law/protocols-and-procedures>.

Upon review of the AAB, conversations with the treatment team, and meetings with the acquittee, the CSB should have a sense of whether this person is able to return safely to the community or if they would benefit from ongoing hospitalization.

The CSB NGRI Coordinator should also establish connections with the acquittee's defense attorney, Commonwealth's Attorney, and the judge. The CSB NGRI Coordinator is the "face" of the CSB in the NGRI cases and will be the primary point of contact for future court matters related to the acquittee's case. The Temporary Custody Appointment letter will have all court officials listed.

**Results of the
Temporary Custody
Evaluations and Next
Steps**

The CSB should be aware of the date of the temporary custody hearing. The CSB can look up the acquittee's court date on the Virginia Supreme Court website (<http://www.courts.state.va.us/caseinfo/home.html>), or can contact the hospital treatment team or Forensic Coordinator.

The temporary custody evaluations are sent to the CSB NGRI Coordinator when completed by the evaluators.

If both evaluations recommend commitment/need for ongoing inpatient treatment, then you likely will wait for the court hearing and (most often) the judge will make a decision to commit. During this time the CSB will continue working with the hospital treatment team on identifying risk factors, making decisions about privileging levels, and identifying initial treatment and potential discharge needs. The judge can decide to release even if both evaluators recommend commitment, however this is rare.

If one or both of the evaluations recommend conditional release, the CSB must begin to develop a Conditional Release Plan (CRP) jointly with the hospital.

Even if the CSB disagrees with the recommendation for release, the CRP is developed in case the judge decides to release the acquittee.

The CSB should take leadership in drafting the plan, as the CSB is the entity that will be responsible for carrying out the services and monitoring the conditions once the acquittee is released.

If one or both of the evaluators recommends release without conditions, or unconditional release, the CSB must begin to develop a discharge plan jointly with the hospital.

Even if the CSB disagrees with the recommendation for release, the discharge plan is developed in case the judge decides to release the acquittee.

The CSB should again take leadership in developing the plan.

***If the CSB Disagrees with
Recommendations for
Release***

The CSB is required to develop a release/discharge plan whenever one of the evaluators recommends release, however there are opportunities to voice disagreement with the recommendation to release:

A. Use the Comments section of the CRP or discharge plan to note concerns about availability of services necessary for the individual's or community's safety, or to make other comments related to the individual's appropriateness for release. The CRP will be sent to the court, so the judge will have an opportunity to review the recommendations in the Comments section.

B. In addition to noting objections/concerns in the Comments section of the release plan, the CSB NGRI Coordinator can choose to write a letter to the court and all parties with comments and recommendations from the CSB perspective. Reasons must be given for any opinions offered, and having first-hand knowledge of the individual's past and current functioning, risk factors, and progress during the temporary custody period is essential.

C. Reaching out directly to the Commonwealth's Attorney to advise them of concerns/opinions on the individual's readiness for release is another option available to the CSB NGRI Coordinator. Often the Commonwealth's Attorney wants to know if there are any potential risk issues and/or lack of appropriate services and supports to manage those risks.

D. Finally, the CSB NGRI Coordinator can request that the Commonwealth's Attorney issue a subpoena allowing the NGRI Coordinator to testify at the Temporary Custody hearing.

In all cases, it is essential that the CSB inform the hospital treatment team of any and all concerns related to the individual's appropriateness for release or the availability of necessary services and supports to keep the acquittee and community safe. Feedback from the team is important in making a decision on whether to voice concerns to the court.
